

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: EASTERN IOWA REGIONAL UTILITY SERVICE SYSTEMS, City of Center Junction STP Center Junction, Iowa NPDES Permit No. 531500	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW- 21
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**TO: Larry Nagle
EIRUSS
7600 Commerce Park
Dubuque, IA 52002**

I. SUMMARY

This Administrative Consent Order (order) is entered into between the Iowa Department of Natural Resources (DNR) and Eastern Iowa Regional Utility Service Systems (EIRUSS) due to failure to timely apply to renew an NPDES permit. The order assesses an administrative penalty in the amount of \$800.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Eric Wiklund, Environmental Specialist
NPDES Section
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515-725-0313

Mail payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon C. Tack
Attorney for DNR
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515- 281-8889

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II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. EIRUSS operates a two-cell controlled discharge sewer treatment plant (STP) treating primarily domestic wastes from the City of Center Junction. This facility is operated pursuant to NPDES permit #5315001 issued on September 10, 2007. The NPDES permit expires on September 9, 2012.
2. The renewal application for the NPDES permit was required to be filed by 180 days prior to expiration of the NPDES permit or by March 13, 2012. This was a condition of the recently expired NPDES permit and a requirement under DNR rules. The DNR sent a renewal application form to the permit holder on July 29, 2011.
3. On May 3, 2012, a notice of violation letter was sent for failure to submit the completed renewal application.
4. A completed application for permit renewal was received from EIRUSS on August 17, 2012.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the DNR. Iowa Code section 455B.183 prohibits the construction or operation of disposal systems without or contrary to written permits from the DNR. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.
2. Iowa Code section 455B.171(5) defines "disposal system" as "a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge." The term "includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge." Any discharge from the Riverton STP would fall within the definition of a disposal system.
3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of

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disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60–69. Subrule 62.1(1) prohibits the discharge of pollutants to waters of the state unless authorized by a permit from the DNR. Subrule 64.3(1) prohibits the operation of a wastewater disposal system unless authorized by a permit from the DNR and prohibits operation of any wastewater disposal system contrary to any condition of a permit.

4. Department subrule 567 IAC 64.8(1) states that “[a]ny state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit.” The facts stated above demonstrate noncompliance with this provision.

5. The terms of this facility’s NPDES permit and the DNR subrule required submission of an application for NPDES permit renewal to the DNR no later than March 13, 2012. The DNR did not receive a complete NPDES permit renewal application for this facility by this date.

6. Pursuant to Iowa Code section 17A.18(2), when a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. NPDES permit No. 5315001 will expire on September 9, 2012 and will not be statutorily extended by this provision because a timely application was not received.

V. ORDER

THEREFORE, the DNR orders EIRUSS, and EIRUSS agrees, to comply with the following provisions in order to resolve this matter:

1. EIRUSS is hereby authorized to proceed with the next scheduled discharge from the Center Junction STP in the fall of 2012 in accordance with the requirements of the prior permit or as directed by the Department. If the NPDES permit is renewed prior to the scheduled discharge, EIRUSS shall comply with the terms and requirements of the renewed permit.

2. EIRUSS is hereby assessed and required to pay an administrative penalty of \$800 within 30 days of execution of this Order.

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VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.109 authorizes the Commission to establish a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$800.

a. **Economic Benefit.** EIRUSS has saved money by not allocating time and resources to the submission of the NPDES permit renewal application. The DNR does not assert that the failure to make timely renewal application was an intended by EIRUSS to create an economic benefit. A penalty in the amount of \$100 is assessed for this factor.

b. **Gravity of the Violation.** Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an NPDES permit and operation of a wastewater disposal system without an NPDES permit are serious violations. The amount of \$200 is assessed for this factor.

c. **Culpability.** The DNR sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. Despite these efforts, a timely application for permit renewal was not submitted. The amount of \$500 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This order is entered into knowingly and with the consent of EIRUSS. For that reason EIRUSS waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175. Total compliance with all provisions of Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.

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CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13th day of
September, 2012.


EASTERN IOWA REGIONAL UTILITY SERVICE SYSTEMS Sept, 2012

Field Office #1; Jon Tack; NPDES #5315001, I.B.(1)